

## BIS Adds 11 Chinese Companies to Entity List in Response to Uyghur Treatment

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On Monday, July 20, 2020, the U.S. Department of Commerce, Bureau of Industry and Security (BIS), added 11 Chinese companies to the U.S. Entity List. According to the [press release](#) issued by Secretary Ross, all 11 entities were “implicated in human rights violations and abuses in the implementation of the People’s Republic of China’s (PRC) campaign of repression, mass arbitrary detention, forced labor, involuntary collection of biometric data, and genetic analyses targeted at Muslim minority groups from the Xinjiang Uyghur Autonomous Region...”

The listing follows a series of escalating actions by the U.S. government related to China and its actions in the Xinjiang Uyghur Autonomous Region (XUAR). For example, the U.S. Departments of State, Treasury, Commerce, and Homeland Security, issued a business advisory to caution about the reputational, economic, and legal risks associated with supply chain links to entities that engage in human rights abuses, including forced labor, in XUAR and elsewhere in China ([XUAR Advisory](#)). In the advisory, U.S. importers/exporters were warned of the situation in XUAR and advised to implement risk-based policies and procedures to avoid taking part in the human rights abuses that PRC is undertaking in the region. Then on July 9, the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) sanctioned one Chinese government entity and four current or former government officials in connection with serious rights abuses against ethnic minorities in XUAR.

In its July 20 press release, Secretary Ross described the following 9 of the 11 entities as being added “in connection with the practice of forced labor involving Uyghurs and other Muslim minority groups”:

- Changji Esquel Textile Co. Ltd.
- Hefei Bitland Information Technology Co. Ltd.
- Hefei Meiling Co. Ltd.
- Hetian Haolin Hair Accessories Co. Ltd.
- Hetian Taida Apparel Co., Ltd.
- KTK Group
- Nanjing Synergy Textiles Co. Ltd.
- Nanchang O-Film Tech

- Tanyuan Technology Co. Ltd.

The remaining 2 entities were added “in connection with conducting genetic analyses used to further the repression of Uyghurs and other Muslim minorities”:

- Xinjiang Silk Road BGI
- Beijing Liuhe BGI

Although the recent listing appears closely linked to the July 9, 2020 designations by OFAC, it is important to understand the different restrictions to which parties on the Entity List are subject from the restrictions imposed on Specially Designated Nationals (SDNs). Many will conflate the SDN and Entity List, but it is important to understand the differences and seek counsel if you find yourself in, or contemplating, a transaction with a party on or closely affiliated with either list.

Although listing a party on the Entity List is one of the more severe actions the U.S. government can impose on a party outside its jurisdiction, it is not as severe an action as designating a party on the SDN list. Below are a few features of each list that are commonly misunderstood:

#### **SDN LIST:**

- The SDN list is administered by the U.S. Department of Treasury.
- All assets of an SDN become blocked property, must be blocked by U.S. parties, and cannot be released back to the SDN without prior authorization from OFAC.
- U.S. persons are prohibited from engaging, directly or indirectly, in any transactions with SDNs or for property in which an SDN has an interest.
- Parties owned 50% or more by an SDN are, by operation of law, subject to the same restrictions as the listed party.

#### **ENTITY LIST:**

- The Entity List is administered by the U.S. Department of Commerce.
- The assets of a party on the Entity List are blocked in the manner described on the listing - generally, this means a license is required for any shipments of goods subject to the Export Administration Regulations (EAR) to a company on the Entity List.
- U.S. persons or parties reexporting goods subject to the EAR are not prohibited from transacting with a company on the Entity List, just from exporting such items to the Entity.
- Ownership by a company on the Entity List does not subject the subsidiary to the same restrictions as the listed parent company, but requires additional diligence on the transaction to determine whether the listed parent would have access to any goods subject to the EAR.

Although these features of the two lists generally hold true, there is no substitute for professional advice when one is faced with a business decision involving a party on, or closely affiliated with a party on, either list. The International Trade team at Winston has deep experience in counseling clients on transactions with parties on both lists and has also counseled numerous clients seeking removal from these lists.

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## **Author**

David Houck

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David Houck

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